



# California Fair Political Practices Commission

March 20, 1989

Kathryn A. Berry  
Treasurer, Alquist Campaign Committee and  
Alquist Hurrah! Committee  
Campbell, Warburton, Britton, Fitzsimmons & Smith  
101 Park Center Plaza  
San Jose, CA 95113-2253

Re: Your Request for Advice  
Our File No. A-89-146

Dear Ms. Berry:

This is in response to your request for advice concerning contribution limits under the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

A candidate's controlled committee received contributions between January 1, and July 1, 1989, from a broad based political committee and deposited the funds in a newly-established bank account containing no funds received prior to January 1, 1989. Should these contributions be aggregated with contributions made between July 1 and December 31, 1988, by the same donor to another committee controlled by the candidate for the purpose of determining whether the donor has met the contribution limits set forth in Proposition 73?

## CONCLUSION

All contributions received from one donor during the fiscal year 1988-1989 count toward the limits established by Proposition 73. A candidate who has received \$5,000 from a broad based political committee between July 1 and December 31, 1988, may not accept a new contribution from the same donor prior to July 1,

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

1989. The Commission may reconsider this advice at its April 4, 1989, meeting.

#### FACTS

Senator Alquist filed a Statement of Intention (Form 501) and a Statement of Organization (Form 410) for the purpose of raising new funds for the June 1992 elections. The campaign committee elected to use its old name, the Alquist Campaign Committee, together with the old identification number, for this campaign. Funds received in 1989 will be kept separate from funds raised in 1988 and will be spent only for the 1992 election.

You selected a new name for the old campaign committee, filed a Statement of Organization Amendment (Form 410) under the name of Alquist Hurrah!, and were assigned a new identification number. Officeholder expenses associated with the holding of the 1988-1992 term of office will be paid from funds raised prior to January 1, 1989.

The Alquist Hurrah! committee received a \$5,000 contribution from a broad based political committee in 1988.

#### ANALYSIS

Proposition 73, enacted on June 8, 1988, added Section 85306 to the Political Reform Act effective January 1, 1989.

Section 85306 provides:

Any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

The Commission adopted Regulations 18536, 18536.1 and 18536.2, copies enclosed, to implement Section 85306. These regulations provide that, notwithstanding Section 85306, candidates and committees may use campaign contributions received prior to January 1, 1989, to support or oppose a candidate as long as the following conditions are met:

(1) The contributions are in compliance with the contribution limitations of Proposition 73 when received;

(2) The contributions have not been commingled with other funds; or

(3) The contributions are brought into compliance with the contribution limits of Proposition 73 pursuant to Regulation 18536.1.

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On February 8, 1989, the Los Angeles County Superior Court ruled that Regulations 18536(b)(2) and 18536.1 are invalid insofar as they permit candidates and committees to expend campaign funds possessed on or before the effective date of Proposition 73. The court left it to the discretion of the Commission to determine the effect of Government Code Section 85306 on contributions received between June 8 and December 31, 1988. (California Common Cause v. California Fair Political Practices Commission, Los Angeles County Superior Court No. C709383.)

The Commission has decided to appeal this ruling and seek a stay. In the interim, however, the ruling of the Los Angeles Superior Court holding the aforementioned regulations invalid is in effect. The elimination of these regulations effectively prohibits use of funds received prior to January 1, 1989, to support or oppose a candidacy for elective office in 1989 or thereafter.

At this time, based upon the definition of "fiscal year" in Section 85102(a) and the language of Sections 85301, 85302 and 85303, the Commission is conservatively advising that contributions made during the first half of the 1988-1989 fiscal year count toward the contribution limitations of Proposition 73. Thus, any moneys received in 1988 may not be used to support or oppose a candidate. Moreover, contributions made in the first part of the 1988-1989 fiscal year will count toward the limits imposed by Proposition 73 and no further contribution should be accepted from a contributor who has already contributed the limit prior to January 1, 1989.

The Commission will include on its agenda for the April 4, 1989, meeting adoption of an emergency regulation which would change this advice. The proposed regulation, if adopted, would limit the 1988-1989 fiscal year to the period from January 1 to June 30, 1989, for purposes of the contribution limits of Proposition 73. (See Section 85104.) Please contact this office after the April 4 meeting for information about the Commission's action on the proposed regulation.

Should you have any further questions, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

By: Blanca M. Breeze  
Counsel, Legal Division

CAMPBELL, WARBURTON, BRITTON,  
FITZSIMMONS & SMITH

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FRANK V. CAMPBELL (1892-1971)  
FRANK L. CUSTER (1902-1962)  
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WILLARD R. CAMPBELL  
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VIRGINIA TURNER HESS  
JAMES L. PAGANO  
KATHRYN A. BERRY  
NICHOLAS PASTORE  
J. MICHAEL FITZSIMMONS

February 28, 1989

Carol Wardlow  
Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Wardlow:

The purpose of this letter is to request a clarification concerning whether contributions received in 1989 and deposited into a newly-established bank account containing no "segregated" funds will be aggregated with contributions received in 1988 for the purpose of determining whether the donor has met the limits set forth in Proposition 73.

Senator Alquist filed a Candidate Intention (Form 501) to raise new funds for the election to be held in June, 1992, together with a Statement of Organization (Form 410). We elected to use the old name, the Alquist Campaign Committee, together with the old I.D. number, 742-256. We have not segregated any funds, therefore any funds received in 1989 are going to be kept strictly separate from funds raised in 1988, and spent only for the 1992 election.

Having reserved our old name (Alquist Campaign Committee) for our new committee, we then selected a new name for the old committee. We filed a Statement of Organization - Amendment (Form 410) under the name of Alquist Hurrah!, and were assigned a new I.D. number, 890-263. Any office holder expenses associated with the holding of the 1988 office will be paid from funds raised prior to January 1, 1989.

Under these facts, will a \$5,000 contribution received in 1988 by the old committee from a certain donor be aggregated with a contribution from the same donor received in 1989 (prior to July 1, 1989) by the new recipient committee formed to raise funds for a future election? (Assume this donor is a "broad based political committee" by definition.)

Carol Wardlow  
February 28, 1989  
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I look forward to hearing from you. Please do not hesitate to contact me at the telephone number listed above if you have any questions.

Very truly yours,

A handwritten signature in cursive script, reading "Kathryn A. Berry".

KATHRYN A. BERRY  
Treasurer, Alquist Campaign Committee  
and Alquist Hurrah! Committee

KAB/cm  
cc: Senator Alquist



# California Fair Political Practices Commission

March 6, 1989

Kathryn A. Berry  
Campbell, Warburton, Britton,  
Fitzsimmons & Smith  
Bank of America Building, 12th Floor  
101 Park Center Plaza  
San Jose, CA 95113-2253

Re: Letter No. 89-146

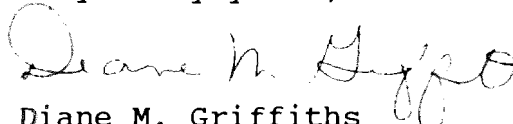
Dear Ms. Berry:

Your letter requesting advice under the Political Reform Act was received on March 6, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

  
Diane M. Griffiths  
General Counsel

DMG:plh